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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/805,163	03/19/2004	Ragu Saimanohar	0050-011P/FLS	7404
22831 7590 07/08/2008 SCHWEITZER CORNMAN GROSS & BONDELL, LLP 292 MADISON AVENUE - 19th FLOOR NEW YORK, NY 10017				
EXAMINER				
TRAN LIEN, THUY				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
07/08/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/805,163

**Applicant(s)**

SAIMANO HAR ET AL.

**Examiner**

Lien T. Tran

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-4, 15 and 16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-4, 15-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

Claims 2-4, 15-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 2, the preamble recites that the snack food contains protein from vegetable sources only; however, the body of the claim recites nonfat dry milk as one of the ingredients. Nonfat dry milk is a protein source and it is not a vegetable protein. Thus, it is not clear what is intended?

Claim 15 has the same problem as claim 2.

Claims 2-4, 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prosise et al in view of Engelman et al and Tanaka et al.

Prosise et al disclose a method of forming nutritious snack food products. The food product comprises vegetable protein materials such as soy flour, peanut flour, cereal protein etc.. mixture thereof, milk proteins such as nonfat dry milk solids, whey protein, caseins etc., fat or oil, carbohydrates including flour, sugar alcohol, glucose, xylose, fiber materials, adjunct ingredients such as leavening agent, emulsifiers, processing aids etc., flavoring agents and vitamins as shown on columns 21-22. Prosise et al disclose the steps of forming cracker as shown on columns 46-47. (see columns 10,13,15,18,19,21-23)

Prosise et al do not disclose the individual steps of forming the whole wheat flour, peanut paste, sesame paste, the use of roasted wheat germ, the thickness, diameter as claimed, the time and temperature of baking as claimed and the product having the composition as claimed.

Engelman et al disclose a process of making low carbohydrate product. They teach the use of a nutritionally complete protein food such as sesame seeds formed into protein powder. (see col. 3 )

Tanaka et al disclose it is known in the art to roast soy materials to reduce beany or off-flavors. ( see col. 4 lines 18-20)

The limitation of " contains protein from vegetable sources only" does not define over Prosise because it is in the preamble and does not limit the claims. Furthermore, the claims recite non fat dry milk which is a milk protein so the product is not limited to only vegetable protein. Even if the claims do limit the protein to only vegetable sources, they do not define over Prosise et al because they disclose a variety of protein ingredients can be used. It would have been obvious to select only vegetable proteins if such proteins are desired. This would have been an obvious matter of preference. Prosise et al do not disclose that the flour is roasted. Prosise et al teach to use flour in making the snack product; it would have been obvious to use whole wheat flour to further enhance the nutrition of the product because whole wheat flour contains more fiber and nutrient than regular flour. The use of whole wheat flour is equivalent to the claimed step of powdering wheat kernels to form flour. If one does not want the convenient of using already made wheat flour, it would have been obvious to start from scratch using wheat kernels. The selection of any particular size would have been a matter of preference. The same is true with the use of peanut flour versus grinding peanut into a paste. If one wants to start from scratch, it would have been obvious to use peanut. It would have been within the skill of one in the art to determine the

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roasting temperature and time. It would have been obvious to roast the soy flour for the reason well known in the art as shown by Tanaka et al. It would have been within the skill of one in the art to determine the appropriate roasting time and temperature through routine experimentation. It would have been obvious to use sesame seed powder as taught by Engelman et al to have a complete protein material in the Prosise et al product because they teach a mixture of protein materials can be used. It would have been obvious to roast the sesame seeds when desiring a toasted flavor. Prosise et al teach fiber materials and other cereal material can be added. Thus, it would have been obvious to add wheat germ because it is a material packed with protein, fiber, vitamin and mineral. The addition of wheat further enhances the objective of the Prosise et al food product. It would have been obvious to roast the wheat germ when wanting the toasted flavor. One skilled in the art can readily determine the roasting time and temperature through routine experimentation. It would have been obvious to one skilled in the art to determine the amounts of ingredients through routine experimentation depending on the type of product made and the flavor, taste, texture and nutritional profile desired. It would have been obvious to vary the thickness of the dough sheet depending on the type of product and the texture wanted. It would have been obvious to cut the product in any size; this would have been a matter of preference. It would have been within the skill of one in the art to determine the appropriate baking time and temperature depending on the product made and the degree of baking wanted. Such parameters are well within the determination of one in the art. The properties of the wheat claimed are conventional and would have been

present in commercially available flour. The specific sequences are matter of optimization. It would have been obvious to one skilled in the art to determine the mixing parameters that would give the most optimum working conditions and product the most optimum product. It would have been obvious to pack the product for storage and distribution. It would have been obvious to one skilled in the art to vary the amount of ingredients and to add various nutritional additives to vary the composition of the product depending on the nutritional profiled wanted for the product. Such parameter is a result-effective variable depending on the type of product wanted and would have been well within the determination of one skilled in the art.

In the response filed 6/20/08, applicant argues selecting the sesame seed component as claimed is not simply a matter of selecting sesame component from the Engelman et al reference. This argument is not persuasive. Engelman et al teach to add sesame seeds to food products to obtain low carbohydrate and high protein baked product. Prosise et al teach a variety of protein sources can be used to make the nutritional foods; thus, it would have been obvious to add sesame as the protein source when the taste of sesame is wanted. The selection of the sesame as a paste, a powder or as seeds or a combination of all depends on the flavor, taste and configuration wanted. For example, if the sesame is wanted inside the product and it is also wanted to have the sesame seed shown on the surface of the product or inside the product, it would have been obvious to use a combination of both paste and seed. Applicant argues the product end result is quite a different matter; it is obvious the end result is different but the result is not unexpected. When the seed is used as powder, it will be

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mixed in with other ingredients; but the addition of the sesame as whole seed will result in the seed being separate entity is the final product. Varying the form of ingredients in food manufacturing is not uncommon. For example, peanut butter cookie is made with peanut paste added to other ingredients, but whole peanut or peanut pieces can also be added to obtain a different look and enhanced taste. Applicant's comment regarding the limitation of "only vegetable protein" is addressed in the rejection. Applicant argues that the use of peanut paste is not a matter of preference versus the use of peanut flour because oil is extruded during the grinding process and has beneficial effects.

Applicant has not shown any evidence of unexpected result of the claimed product versus the Prosise et al product. Also, it is not clear what applicant means by oil is extruded. Furthermore, Prosise et al teach to make peanut flour by roasting the peanut and grinding the peanut to product a nut paste; the nut paste is then milled to form flour. Applicant's comment about the protein source and unroasted whole wheat flour is addressed in the rejection. Applicant argues the Tanaka disclosure of roasting soy flakes is really unrelated to the formulation of snack food product. The Tanaka is only relied upon to show that roasting of soybean reduces the beany or off-flavors. Thus, it would have been obvious to roast the soybean when desiring to reduce the beany or off-flavors when making the Prosise et al product. Tanaka is not used to show the making of the snack product.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

July 5, 2008

/Lien T Tran/

Primary Examiner, Art Unit 1794